

at the time he made his report it never occurred to him to blame the lorry for the simple reason that it was then, according to his reckoning, blameless. Even if the lorry had, in fact, been overtaking any such bus as now alleged, its off-side wheels would, at the most, have been slightly over the crown of the road which should have allowed the scooter, which was the only other vehicle on its side of the road, to travel past the lorry in safety. It seems to me quite clear that the collision took place because the plaintiff swerved to his right to avoid the pedestrian who dashed across his path. The plaintiff himself admitted in evidence that "If not for the man stepping out and my swerving to right to avoid him the lorry would not have hit me even if it was on its wrong side of the road".

From the final position of the scooter after the accident and the position of the broken glass, I am not satisfied that the point of impact was necessarily on the plaintiff's side of the road. Even if it was slightly on the plaintiff's side this would not, for reasons which will appear later, conclude the matter in the plaintiff's favour. It is more likely that the scooter swerved over the crown of the road and made contact with some part of the rear of the lorry in such a manner as to cause the scooter to swivel round to face the opposite direction. In the course of this the handle-bar came off and the scooter fell on its left side. The plaintiff sustained injuries to his left ankle, left leg and left thigh.

Apart from the plaintiff's version in court there is nothing in the evidence to indicate clearly that the lorry was on its wrong side of the road at the time of the collision. The only complaint one can make against the defendant is that he failed to remain at the scene but for this he has given an explanation. He also failed to make his report till some 7 hours later. I do not now consider, however, that this conduct on his part, which at first appeared to me to be indicative of some kind of guilt, necessarily connotes culpability on his part. As Lord Justice Greer said in the Court of Appeal in *Kirk v. Parker* ⁽¹⁾ at p. 132:

"... I take it that the learned judge was justified in deciding that the off-wheels of the lorry were probably a little over where the white line would have been. But that is not necessarily negligence if, by driving a car in that position, it is clear you will avoid any collision with vehicles coming in the opposite direction".

It is clear that the lorry would have avoided any collision with vehicles coming in the opposite direction even if its off-wheels had been on or slightly over the crown of the road. The sole cause of the collision was, therefore, the behaviour of the plaintiff in swerving to his right into the path of the lorry.

As Lord Justice MacKinnon said in the same case at page 134:

A "... There cannot, I think, be the slightest doubt, when all these facts have been investigated, that the truth about this collision was told in a few words by Master Kenneth Taylor after the accident happened, when he said to the policeman: 'My companion turned out on to his off-side and went into the side of the lorry coming in the opposite direction'. To my mind there is not a possibility of any doubt that that is really what happened".

B In the present case it was not another eye witness such as Master Kenneth Taylor who, after the collision, told the policeman that his companion turned out on to his off-side and went into the side of the lorry coming in the opposite direction. It was the plaintiff himself who said this to the police in his first report.

C As I have said earlier, I have carefully considered the fact that he was in hospital in a bad physical condition at the time of his report but I have no doubt that what he then said was a true account of what actually happened and that the defendant's lorry was not, at any time, in his path to such an extent as to affect his ability to make his way safely towards the city had he remained on his normal course.

D For these reasons I hold that the defendant was not negligent and the plaintiff's claim is accordingly dismissed with costs.

E *Claim dismissed.*

Solicitors: *P. T. K. Lau; Allen & Gledhill.*

WONG KONG v. YEE HUP TRANSPORT CO. & ORS.

F [O.C.J. (MacIntyre J.) May 26, 1966]

[Ipoh — Civil Suit No. 252 of 1964]

Negligence — Damages — Duty to mitigate loss — Loss of wife's income — Special damages.

Damages — Leg — ½" shortening — Knee flexion limited to 90°.

G The plaintiff was injured as a result of collision which was found to be caused by the negligent driving of the second defendant, who was employed by the first defendant. The plaintiff claimed general damages and also special damages for loss of earnings, special food, travelling expenses incurred by the plaintiff's wife in visiting him daily at the hospital and travelling expenses for himself. As a result of the accident the plaintiff suffered two permanent disabilities: he walked with a limp and he was unable to sit on his haunches.

H **Held:** (1) in the circumstances of this case the plaintiff was entitled to claim damages for loss of earnings at the rate of \$200 per mensem from the date of the accident to the date of trial, as his failure to resume his business after his medical treatment was not due to any wilful act of omission to minimise the damages but to circumstances beyond his control;

I (2) the plaintiff was in the circumstances of this case entitled to recover the travelling expenses incurred by his wife, as the fact that he was bedridden necessitated the presence of his wife in the hospital;

(3) taking all factors into consideration the damages would be assessed at \$12,600 for loss of prospective earnings and \$5,000 for pain and suffering.

Observations on the meaning of consortium.

Cases referred to:—

- (1) *Public Prosecutor v. Mohamed Ali* [1962] M.L.J. 257.
- (2) *Attorney-General v. Valles Jones* [1935] 2 K.B. 209, 219.
- (3) *British Westinghouse Electric and Manufacturing Co. v. Underground Electric Railings Co.* [1912] A.C. 673, 689.
- (4) *Pasuna Pharmacal Corp. v. McAlister & Co. Ltd.* [1964] M.L.J. 190, 198.
- (5) *Best v. Fox* [1952] A.C. 716.
- (6) *Kirkham v. Goughy* [1957] 3 All E.R. 153 156.
- (7) *Stone v. Jackson* (1885), 16 C.B. 199; 139 E.R. 732.

CIVIL SUIT.

E. K. Yeap for the plaintiff.

R. Talalla for the 1st and 2nd defendants.

Peh Swee Chin for the 3rd and 4th defendants

Cur. Adv. Vult.

MacIntyre J.: The plaintiff claims damages from all the defendants or in the alternative from the 1st and 2nd defendants or from the 3rd and 4th defendants, for personal injuries, pain and suffering and consequential loss and expense arising out of a collision between motor lorry AA 5783 belonging to the 1st defendants and driven by the 2nd defendant as their servant or agent and motor lorry AB 1155 belonging to the 3rd defendants and driven by the 4th defendant as their servant or agent.

At the time of the collision the plaintiff was travelling as a gratuitous passenger on the 3rd defendants' motor lorry. The lorry was then proceeding along Jalan Bendahara from Ipoh Town towards a building settlement known as Happy Gardens and came into collision with the 1st defendants' lorry which was said to be in the course of reversing diagonally across the road from left to right with the object of backing into a lane to discharge some goods at a secondhand dealers' shop.

From the place of impact the road slopes slightly downwards in the direction of Ipoh to a distance of 55 feet and at a distance of about 100 yards turns to the right beyond which it is not visible. A driver coming from the direction of Ipoh would be able to see from the bend the movement of any vehicle about a 100 yards ahead of him. Likewise, the approach of a vehicle from the direction of Ipoh would be visible for the same distance from the place of impact.

The plaintiff, at the trial, claimed complete ignorance of how the accident happened. According to him, he was seated on the nearside seat in the cab of the lorry driven by the 4th defendant and was looking to his right when the

A collision occurred and could not therefore say how it happened. He did not feel his lorry swerve or the brakes being applied or hear the horn being sounded. He had suddenly felt something strike his leg and on turning round realised that he had been struck by the tail end of a lorry which was across the road and moving forwards after the collision. He then lost consciousness and was taken to a hospital.

It is interesting to observe that while in court he assumed the role of an impartial witness and left it to the court to decide which of the defendants or all of them were liable in damages, not so long ago he had acted in the belief that the 4th defendant was solely responsible for the accident.

On the 23rd of August 1963, that is, about a year after the accident, he had instructed his then solicitor to send notices of demand (*vide* AB 10 and AB 12) to the 3rd and 4th defendants placing the sole blame for the accident on the negligence of the 4th defendant. In AB 10 his solicitor wrote: "You so negligently drove the said motor vehicle AB 1155 that you caused or permitted the same to collide with another motor vehicle bearing registration No. AA 5783." Later on the 9th of April 1964 he instructed his present solicitors to write to the 3rd and 4th defendants (*vide* AB 22) reminding them of the previous notice sent and renewing the demand for damages. It was not till about a month before filing the present action that it occurred to the plaintiff or his solicitors to write to the 1st and 2nd defendants (*vide* AB 24) claiming damages.

Be that as it may, I have to decide the issue of negligence in this case on the evidence before me and in this respect the evidence of the plaintiff was not of any material assistance to the court.

Now the evidence in regard to the collision as given by the 2nd defendant (D.W.2) and his attendant (D.W.3) was in sharp conflict with the evidence of the 4th defendant (D.W.4) and his attendant (D.W.5). Each party held the other to be solely responsible for the collision.

According to the version of the 2nd defendant he arrived at the scene from the direction of Ipoh shortly before the accident and had stopped his lorry on the left hand side of the road with the intention of reversing it into the lane on the opposite side. The reason why the lorry had to be reversed was that the lane was too narrow for turning the lorry round after unloading. His attendant had then unfastened the tail board which was suspended on hooks and allowed to project backwards horizontal to the ground. According to the attendant, he unfastened the tail board in preparation for unloading and to enable the 2nd defendant to look behind through the rear window of the cab.

However, the 2nd defendant did not make use of the rear window. According to his evidence he looked into the rear view mirror and 'popped' his head to his right and found the road behind clear of traffic. He had then asked his attendant for confirmation which he did and followed it by a signal indicating that the road was clear; whereupon he reversed the lorry to a distance of 50 feet parallel to the left edge of the road and then diagonally across it, but when the tail end of his lorry had passed the crown of the road his attendant suddenly gave the signal to stop. He stopped at once but almost immediately afterwards the 4th defendant's lorry ran into the rear part of his lorry. In consequence his lorry was pushed forward. He then pulled up his lorry and alighted and discovered that the verticle bar at the off-side rear of his lorry had sustained some scratches and the arm-rest of the nearside seat in the cab of the other lorry had been smashed and broken.

As a result of the accident the plaintiff was injured and sustained a fracture of the left femur. The attendant of the 2nd defendant's lorry deposed that he first saw the other lorry when the tail end of his lorry had already crossed the crown of the road. The other lorry had then just negotiated the bend about 270 feet away. He deposed further that despite his frantic signals to stop, the other lorry came at great speed and collided with his lorry.

Now according to the evidence of the 4th defendant, the 2nd defendant's lorry was parked on the left side of the road but when he was about to pass it the 2nd defendant without warning reversed it across the road and collided with his lorry.

In the first place, it is clear from the sketch plan (AB 6) that the collision occurred at the crest of a curve in the road. If the 2nd defendant had looked at the rear mirror or 'popped' his head to the right and looked behind, he could not have had a clear view of the left side of the road behind him. He could have had a better view had he looked through the rear window, which he did not do.

Secondly, it is clear from the evidence, that while the 2nd defendant did take steps to ascertain whether the road was clear before he started to reverse his lorry parallel to the edge of the road, he failed to ascertain by personal observation whether the road was clear before starting to reverse across it. He seems to have depended entirely on his attendant. It was urged upon me that since the 2nd defendant was unable to see the road behind him when reversing across it, the blame, if any, for not keeping a proper lookout, must fall on the lorry attendant. It is true that one of the conditions attached to a carrier's licence issued under the Road Transport Rules

A requires an attendant to be carried on a lorry for the express purpose of signalling to overtaking traffic and to the driver of his own lorry of the approach of such traffic. However, we are not concerned in this case with overtaking traffic but with approaching traffic since the 2nd defendant at the time of the collision was reversing the lorry. In the circumstances, I would consider it a dereliction of his duty of care if he did not attempt to ascertain by personal observation whether the road was clear. In this respect he failed to discharge his duty. He should have looked through the rear window of the cab or got down from his lorry and satisfied himself of the absence of traffic or obtained an oral assurance from the attendant that the road was clear. He did none of these immediately before starting to reverse diagonally across the road.

Thirdly, the facts are consistent with the 4th defendant's version of the accident as corroborated by his attendant and totally inconsistent with the version given by the attendant of the 2nd defendant's lorry who was after all the only eye-witness of the accident from that lorry. According to this witness when he first saw the 4th defendant's lorry it had just negotiated the bend in the road about 270 feet away and at that time the tail end of his lorry had already crossed the crown of the road. The actual place of impact on the road was pointed out to me by the parties when I visited the scene and had measurements taken (*vide* Exh. 'X'). The point of impact was about 8½ feet from the opposite edge of the road towards which the 2nd defendant's lorry was reversing. The road at this point is 31 feet wide. In relation to the crown of the road the place of impact was just 7 feet over the middle line of the road. Since the lorry driven by the 2nd defendant was said to be in motion until almost immediately before the collision, the court is asked to believe that the 4th defendant's lorry which was 270 feet away raced across that distance in a matter of a split second and collided with the 2nd defendant's lorry. This story, to say the least, is absurd. The 4th defendant's version that the 2nd defendant's lorry suddenly backed across the road without warning and collided with his lorry before he had time to pull up, seems more consistent with the facts. The fact that the 4th defendant's lorry stopped almost at the point of impact also supports his evidence that prior to the collision he was driving at a moderate speed.

I Counsel for the 2nd defendant put it to the 4th defendant in cross-examination that the accident occurred because he was travelling at a great speed and had attempted to squeeze his way between the reversing lorry and a car approaching from the opposite direction. Now the 4th defendant was a witness for the prosecution in a criminal case arising out of the same accident

(*vide* AB 15) and in that proceeding he did say that he did not swerve his lorry to his extreme right because he might have collided with cars coming from the opposite direction. Even if that possibility existed I fail to see anything negligent in an emergency such as would arise when the 2nd defendant suddenly and without warning reversed his lorry across the road, if the 4th defendant had in the absence of any other alternative by which there was a possibility of avoiding a collision with either vehicle attempted to speed through the narrowing gap. However, at the hearing of this case the 4th defendant said that he could not swerve any further to the right not because of an on-coming car but because he had no time to do so. Had there been an on-coming car, the 2nd defendant would have been all the more negligent in attempting to reverse his lorry then. It is significant that no evidence was given by the 2nd defendant or the attendant of his lorry about an on-coming car.

Having considered the evidence as a whole I have come to the conclusion that the collision was caused by the negligent driving of his vehicle by the 2nd defendant. I am unable to hold on the evidence that the 4th defendant was guilty of contributory negligence. I therefore hold the 1st and 2nd defendants liable in damages to the plaintiff.

On admission to hospital the plaintiff was found to be suffering from shock and pain as a result of the fracture of the upper third of the left thigh bone. He was operated upon to ascertain the cause of a pain in the abdomen but no abnormality was discovered. The left leg was placed on splints and later encased in plaster of paris. The plaster was removed on the 29th September 1962 and the splints on the 6th February 1963. After the operation plaintiff was given blood transfusion and until his recovery treated with anti-biotics and sedatives. Physiotherapy was started on the 10th of January 1963 and by the 8th of March he was able to walk with the aid of crutches but not till the 22nd was he able to flex his left knee to a limited extent. On the 29th he was discharged from hospital but continued to receive treatment for a further period of 4 months as an out-patient.

According to the evidence of the surgeon (P.W.3) the plaintiff suffered from considerable pain during the early stages of his recovery and was bedridden and forced to lie on his back for a period of about 5½ months.

On the 3rd of April 1964 the plaintiff was re-examined by the same surgeon with the object of finding out whether he suffered from any permanent disability as a result of the injuries sustained. It was found that the operation had left a permanent scar on the abdomen, the left

A leg had shortened by about ½ an inch and the flexion of the left knee was limited to 90°. In consequence the plaintiff walked with a limp and could not sit on his haunches. However, an X-Ray showed a well united fracture of the upper left femur with a slight displacement of the fragments and in the opinion of the surgeon the union was sound and the position could be accepted as satisfactory. According to the plaintiff he still experienced pain in the abdomen when he walked beyond short distances. In regard to this complaint the surgeon had no doubt that the plaintiff would experience discomfort in walking long distances because of the limp but he could not account for the pain. However, he admitted that he was not in a position to disprove the allegation.

For about a year before the accident the plaintiff is said to have earned his livelihood as a quarry contractor who supplied stones and metal for construction works. He supervised the breaking of the stones and their despatch to the work sites. No evidence was led as to the nature of his employment before he became a quarry contractor.

He claimed to have earned about \$300 a month but kept no account books of any kind in relation to his business. Nor was his business registered with the Registrar of Business. He claimed to have had many permanent customers among whom was a contractor named Damoderam and one Mok Sai Yew. The former was not called to give evidence as he was said to have gone away to Singapore just before the subpoena was issued but Mok Sai Yew (P.W.3) gave evidence. This witness testified that he was one of the regular customers of the plaintiff and in the course of cross-examination admitted that he had an account book which would show that he had business dealings with the plaintiff. He was ordered by the court to produce the book on the following day, which he did. The account book was admitted in evidence as Exh. P.3. On further cross-examination the remarkable fact emerged that each and every entry in P.3 relating to a transaction with the plaintiff was written in ink of a uniform colour but different from the rest of the entries in the book; and further the entries were found to be either the last entry on a page or squeezed in between the lines among other entries. In one instance an entry dated the 25th of June 1962 appeared at the foot of the page immediately following an entry dated the 27th of June and the only explanation given was that the date of the entry corresponded with the date on the relevant voucher. In view of the suspicious circumstances surrounding the entries in P.3, I decided to reject the evidence of this witness in toto.

However, according to the evidence of the plaintiff, the 3rd defendants were also one of

his customers, and his evidence to that effect was not challenged. Nor was the plaintiff's allegation that at the time of the accident he was travelling in the 3rd defendants' lorry with a view of engaging it for his business after it had completed the instant assignment denied or disputed.

I accept the evidence of the plaintiff that he earned his livelihood as a quarry contractor but not his bare assertion that he earned \$300 per mensem. To quote from the 1st volume of *Kemp & Kemp* (2nd Edition) at page 19:

"In the case of a self-employed or professional man, whose earnings fluctuate, the court will have to estimate this loss and make an award of damages in respect of it."

I shall now consider the items of special damages as claimed in paragraph 2 of the amended statement of claim. Under particulars of loss and expenses in item (a) thereof, a sum of \$6,450 is claimed for loss of earnings from 5th September 1962 to 16th June 1964 i.e. to say, loss of earnings for a period of 21½ months estimated at \$300 a month.

Counsel for the plaintiff urged that on the authority of *Public Prosecutor v. Mohamed Ali*,⁽¹⁾ I should accept the evidence of the plaintiff as to his monthly income because his story was not inherently improbable. With respect I think that the analogy is far fetched. In *Public Prosecutor v. Mohamed Ali*, *supra*, Thomson C.J. (as he then was) held that when a police officer says something in evidence which is not inherently improbable it must in the first instance be accepted. In that case the police officer had said in evidence that a motor van was driven at a speed in excess of 20 m.p.h. judging from the speedometer of his own car which closely followed it for about half a mile but the lower court without giving any adequate reasons rejected that evidence. The appeal court reversed that finding on the ground that there was nothing inherently improbable in the story of the police officer, which was not shaken by cross-examination or rebutted by other evidence. In the present case the onus is upon the plaintiff to prove that he earned \$300 a month. His sworn statement to that effect may possibly be true; but the court would be setting a dangerous precedent if it were to hold that the allegation is inherently probable without hearing any evidence as to the volume and value of the business transactions conducted by the plaintiff.

Counsel further sought to fortify his submission by arguing that it would be reasonable to presume that the plaintiff earned at least \$300 a month because he had a wife and three school-going children to maintain. I dare say that there are families in this country with three or more school-going children subsisting on an income

A of less than \$200 a month. It all depends on the social status and the standard of living of the family concerned. Although the plaintiff calls himself a quarry contractor the nature of his occupation was nothing more than that of a foreman who supervised the breaking of stones and their dispatch to the work sites. The volume of business he transacted must have been small for he did not think it necessary to keep an account book or even a wages book; and as for the maintenance of his family he was admittedly dependant upon his wife who worked as an odd job labourer.

C In the circumstances I would assess the plaintiff's monthly income at the lowest possible limit consistent with the nature of his work. I assess it at \$200 per mensem.

D It was next urged upon me that the actual loss of earnings should be calculated from the date of the accident to the date of trial i.e. to say, from the 5th of September 1962 to the 24th of February 1966. Counsel for the 1st and 2nd defendants, on the other hand, submitted that the plaintiff could have minimised his financial loss by resuming his business when his medical treatment ceased at the end of 11 months from the date of the accident. He based his argument on the principle enunciated in *Attorney-General v. Valles Jones* ⁽²⁾ by MacKinnon J. who said:

E "A person is entitled to recover only those damages which he has incurred while acting reasonably, and, if acting reasonably he could have minimised or reduced the damages that he had sustained to a smaller amount, it is the smaller amount he can recover."

F In *British Westinghouse Electric and Manufacturing Co. v. Underground Electric Railways Co.*,⁽³⁾ Viscount Haldane L.C. said:

G "The fundamental basis is thus compensation for pecuniary loss naturally flowing from the breach; but this first principle is qualified by a second, which imposes on a plaintiff the duty of taking all reasonable steps to mitigate the loss consequent on the breach, and debars him from claiming any part of the damage which is due to his neglect to take such steps."

H This principle was applied by Ambrose J. in *Pasuma Pharmacal Corp. v. McAlister & Co. Ltd.*⁽⁴⁾ and the relevant portion of his judgment reads:

"The law imposes a duty upon the defendants to take all reasonable steps to mitigate the loss caused by the breach of contract committed by the plaintiffs and debars them from claiming compensation for any part of the damage which is due to the defendants' neglect to do so."

I However, it is clear from the evidence before me that the plaintiff's failure to resume his business after his medical treatment had ended was not due to any wilful act of omission to minimise the damages but to circumstances beyond his control.

He was unable to restart his business as a

quarry contractor because he had lost by theft all the implements of his trade while confined in hospital and did not have the necessary capital estimated at \$1,500 to resume business.

To quote again from *Kemp & Kemp* (2nd Edition) volume I at page 10:

"An injured plaintiff is entitled to damages for loss of earnings and profits which he has suffered by reason of his injuries up to date of trial...."

In the present action the trial commenced about 42 months after the accident. I therefore estimate the loss of earnings at \$8,400.

Under item (b) a sum of \$511.50 is claimed for purchase of "special food, medicine and tonics etc." This expenditure is said to be over and above the amount of \$56 paid in settlement of hospital bills which is claimed separately under item (c) and which claim I shall allow. No bills or receipts were produced or witnesses called to prove expenditure of \$511.50 or any part thereof. All that the plaintiff himself could say about this item of claim was that over \$600 was spent. Since special damages must be strictly proved, I disallow this claim.

A sum of \$500 is claimed for travelling expenses incurred by the plaintiff's wife to visit him daily in hospital and for his own travelling expenses when he was treated for 4 months as an out-patient. It was not denied that the wife did attend upon her husband in the hospital. The plaintiff deposed that the taxi and trishaw fare from his house to the hospital and back was \$3 and \$2, respectively.

While it was conceded that the plaintiff's travelling expenses were justified, counsel for the 1st and 2nd defendants urged that since a wife was not entitled in law to the consortium of her husband, a claim for her travelling expenses to visit him in hospital should be disallowed. He based his argument on the principle enunciated in *Best v. Fox*⁽⁵⁾ to the effect that a married woman whose husband had been injured by a negligent act or omission had no right of action against the negligent person for loss or impairment of consortium. He also cited a passage from the judgment of Diplock J. in *Kirkham v. Goughy*⁽⁶⁾ which reads as follows:

"While he is, of course, entitled to recover these damages which flow from his own injuries, I do not see how this can enlarge the measure of his damages for the quite separate wrong to his quasi-proprietary interest in the consortium of his wife."

I am not at all quite sure that the *ratio decidendi* in respect of this claim in this suit is based on consortium. 'Consortium' was defined in *Stone v. Jackson*⁽⁷⁾ as loss of "comfort, benefit and assistance in domestic affairs." In the instant case the presence of the wife in hospital was not required for the purpose of performing her wifely or her domestic duties but to assist

A the hospital staff in nursing her husband since he was bedridden and forced to lie on his back and required extra assistance. The plaintiff deposed that he was asked by a nurse in the hospital to employ an assistant to look after him and the surgeon who attended on him confirmed that bedridden patients were allowed to be attended by their relatives. It is only reasonable to assume that apart from the psychological effect of the wife's presence helping to achieve a speedy recovery and thus reducing the quantum of damages, the hospital authorities welcomed her assistance as the plaintiff was in need of attendance throughout the 24 hours of the day. B Since the plaintiff was bedridden for 168 days which necessitated the presence of his wife in hospital and it is not disputed that he had to go to the hospital for about 120 days for treatment as an out-patient, the total travelling expenses would have exceeded the claim under this head even if the transport used was a trishaw. I therefore allow the claim for \$500 for travelling expenses. C

Finally, under item (e) a sum of \$480 is claimed for loss of the wife's income during a period of 6 months (estimated at \$4 per day) when she had to attend upon her husband. This claim was opposed strenuously on two grounds, namely, that in the first place the claim was ultimately based on loss of consortium by the wife and in the second place the wife cannot claim for her loss of income through her husband. D

I have already held that owing to extraordinary circumstances, the plaintiff's wife had to be with him in the hospital for 168 days and that the reason for her attendance upon him had nothing whatever to do with consortium. The work she did could have been performed by a paid attendant in which case the plaintiff could have claimed by way of damages the wages paid to him. As regards the second point, the plaintiff was undoubtedly dependant on a part of his wife's income to meet the family expenses. To that extent, the loss of income by his wife was a loss to him in consequence of the injuries sustained by the negligent act of the 2nd defendant. The amount claimed appears to be assessed on an income of \$80 a month although the plaintiff said in evidence that his wife earned about \$100 a month. The wife, of course, would have used a part of her earnings on herself and I would assess the husband's dependancy on her at \$60 a month out of an income of \$80 a month. I shall therefore allow this item of claim at \$360 for six months. E F G H I

In the result the plaintiff will be entitled to special damages in the sum of \$9,316.

As for general damages, the plaintiff suffers, as a result of the injuries sustained in the accident, two permanent disabilities. He walks with

a limp due to the shortening of the left leg by $\frac{1}{2}$ an inch and he is unable to sit on his haunches owing to limitation in the flexion of the left knee to about 90° . The second disability is the more serious of the two as far as loss of amenity is concerned. The plaintiff will not be able to ride a bicycle or to use the Asian type of lavatory. The physical discomfort of walking with a limp may be overcome by the use of a high heeled shoe. As for the alleged pain which resulted from walking long distances, the surgeon could not account for it but conceded that prolonged walking with a limp may cause a backache.

The plaintiff was in a state of shock when he was admitted to hospital and underwent pain and suffering for some days and the inconvenience and mental distress of lying on his back with his left leg immobilised for 168 days.

The plaintiff's prospective loss of future earnings is one of those imponderables which has to be decided. He is now 59 years of age. According to his counsel, there is no reason barring accidents, why he should not live for another 10 years. The physical disabilities sustained by the plaintiff do not appear to be the reason why he did not resume his business as soon as he recovered from his injuries. The reason was lack of money to meet capital expenditure estimated at \$1,500 but plaintiff qualified that statement by saying that he would have required an assistant to help him. The question of finding the necessary capital would not be a problem if plaintiff recovers damages in this action but the necessity of making allowance for the employment of an assistant would depend upon the extent to which plaintiff is incapacitated from carrying on the business by virtue of his physical disabilities. The main task in his business is supervision over the work of breaking stones at the quarry and delivering them at the work site. It is not exactly the type of work which could be carried out from an arm-chair and would involve a certain measure of physical strain. In a work of this kind, even if the plaintiff is able to work part-time, it may not be possible to engage a part-time assistant. In view of the physical disabilities sustained by the plaintiff, I am of the opinion that the business cannot be efficiently carried on by him without a full-time assistant. I agree with counsel that at least a sum of \$150 would be required each month by way of remuneration for the assistant. Therefore, on the basis of my finding that the plaintiff earned about \$200 a month, the prospective loss of earnings over a period of ten years would be \$18,000. But before finally assessing the amount, I shall have to take into consideration various contingencies. With the additional capital available the plaintiff may be able to expand the business and double or trebble his

income or he may be able to change his business to a more lucrative and less taxing one on his physical capacity. On the other hand, his business might fail or his remaining life span may be much shorter than ten years. Taking all these factors into consideration, I will assess the loss of prospective earnings at \$12,600 and damages for pain and suffering at \$5,000.

There will therefore be judgment for the plaintiff for \$26,916 and costs against the 1st and 2nd defendants. The claim against the 3rd and 4th defendants is dismissed with costs and there will be a further order that the costs payable by the plaintiff to the 3rd and 4th defendants be taxed and recovered from the 1st and 2nd defendants.

Judgment for the plaintiff.

Solicitors: Yeap & Yeap; Richard Talalla & Menon; Peh Swee Chin.

HOON WEE THIM v. PACIFIC TIN CONSOLIDATED CORPORATION

[O.C.J. (Gill J.) May 28, 1966]

[Singapore — Civil Suit No. 1053 of 1964]

Tort — Non-Natural use of land — Danger to others — Absolute liability — Rule in Rylands v. Fletcher.

Damages — Personal injuries — Recovery under doctrine of Rylands v. Fletcher — Interest on damages.

Mining — Reservoir above ground level — Collapse of bund — Escape of water — Liability.

The defendants had built a water reservoir above ground level on their land. The reservoir contained very large quantities of water. There was heavy rainfall in the surrounding hills on October 7 and 8, 1963 and seepage conditions appeared on the water bund of the reservoir. The bund started to fail and finally collapsed. As a result water escaped on to the adjacent land and this caused the death of one Hoon Thye Peng by drowning. The administrator of his estate claimed damages arising out of the death.

Held: (1) this case comes within the rule in *Rylands v. Fletcher* (1) and the defendants were liable in damages;

(2) damages for personal injuries can be recovered under the doctrine of *Rylands v. Fletcher* and therefore the plaintiffs were entitled to recover damages for the death of the deceased in this case.

Cases referred to:—

- (1) *Rylands v. Fletcher* (1868), L.R. 3 H.L. 330.
- (2) *Attorney-General v. P. Y. A. Quarries Ltd.* [1957] 2 W.L.R. 786.
- (3) *Smith v. Kenrick* (1849), 7 C.B. 515.
- (4) *Baird v. Williamson* (1863), 15 C.B. (N.S.) 376.
- (5) *Rickards v. Lothian* [1913] A.C. 263, 280.
- (6) *Read v. Lyons & Co. Ltd.* [1947] A.C. 156, 176.
- (7) *Tennent v. Earl of Glasgow* (1864), 2 M. (H.L.) 22.